

VZCZCXRO2839

RR RUEHCD RUEHGD RUEHHO RUEHMC RUEHNG RUEHNL RUEHRD RUEHRS RUEHTM

DE RUEHME #3101/01 3012136

ZNY SSSSS ZZH

R 282136Z OCT 09

FM AMEMBASSY MEXICO

TO RUEHC/SECSTATE WASHDC 8804

INFO RUEHX/ALL US CONSULATES IN MEXICO COLLECTIVE

RHMFISS/DEPT OF JUSTICE WASHINGTON DC

RUEHC/DEPT OF LABOR WASHINGTON DC

RUEATRS/DEPT OF TREASURY WASHINGTON DC

RUCPDOC/DEPT OF COMMERCE WASHINGTON DC

RHMFISS/CDR USSOUTHCOM MIAMI FL

RHMFISS/HQS USNORTHCOM

RUEAHLA/DEPT OF HOMELAND SECURITY

RUEABND/DEA HQS WASHINGTON DC

RHEHAAA/NSC WASHINGTON DC

S E C R E T SECTION 01 OF 03 MEXICO 003101

NOFORN

SENSITIVE

SIPDIS

E.O. 12958: DECL: 07/24/2019

TAGS: PREL PGOV PINR MX

SUBJECT: MEXICO: ARTICLE 29 'STATE OF EXCEPTION' --

UNCERTAIN RESULTS, FEW BENEFITS

REF: A. MEXICO 3076

1B. MEXICO 2154

Classified By: Charge d' Affaires John Feeley.

Reason: 1.4 (b),(d).

11. (S/NF) Summary. Defense Secretary Galvan raised recently the possibility of invoking Article 29 of the constitution to declare a state of exception in certain areas of the country that would provide more solid legal grounds for the military's role in the domestic counternarcotics (CN) fight. Secretary of Government Gomez Mont has alternately provided a different view, citing a Supreme Court decision as sufficient precedent for providing the military the legal basis for its domestic CN activities. Our analysis suggests that the legal benefits to invoking a state of exception are uncertain at best, and the political costs appear high. While the possibility of such a declaration cannot be discounted at some future date, the GOM seems far from settled on the efficacy or need for such an immediate move. End Summary.

#### Background and Context

---

12. (S/NF) In an October 19 meeting with Director for National Intelligence Dennis Blair (ref a), Secretary of Defense (SEDENA) General Guillermo Galvan lamented the lack of legal basis for the military's domestic counternarcotics deployment as key to shaping the public's perception that the Armed Forces lack the appropriate authorities to conduct such operations. He noted that SEDENA is working to pass the National Security law (ref b), proposed by President Calderon in the final days of the last congressional session, to help shore up these legal foundations. Additionally, he mentioned that Article 29 of the Mexican constitution would permit the President to declare a state of exception in specific areas of crisis and give the military greater juridical scope to maneuver. In a later meeting, Secretary of Government Fernando Francisco Gomez Mont responded to questions by U.S. officials on the Article 29 issue. He contradicted Galvan's view that the military does not have legal basis for its domestic CN activities and cited a Supreme Court decision as having already set precedent (Note: Gomez Mont is almost certainly referring to a 1996 Supreme Court decision that ruled the military has the authority to operate at the request of local authorities in support of policing operations. End note.) He implied that the invocation of Article 29 does not have the legal urgency or necessity Galvan suggested, but did admit

that the state of exception in places such as Ciudad Juarez "had been discussed." He said that no decision had been reached.

#### Article 29 Text

---

¶3. (S/NF) The translated text of Article 29 of the constitution reads: "In the event of invasion, serious disturbance, or any other event which may place society in great danger or conflict, only the President of the Mexican Republic, with the consent of the Council of Ministers and with the approval of the Federal Congress, and during adjournments of the latter, of the Permanent Committee, may suspend throughout the country or in a determined place the guarantees which present an obstacle to a rapid and ready combating of the situation; but he must do so for a limited time, by means of general preventive measures without such suspensions being limited to a specified individual. If the suspension should occur while the Congress is in session, the latter shall grant such authorizations that it deems necessary to enable the Executive to meet the situation. If the suspension occurs during a period of adjournment, the Congress shall be convoked without delay in order to grant them."

#### What Would Article 29 Look Like?

---

¶4. (S/NF) The terms of the state of exception detailed in Article 29 are vague and offer little insight into how its

MEXICO 00003101 002 OF 003

invocation would play out on the ground. There appears to be a great deal of leeway for the President -- with the approval of Congress -- to determine what kinds of guarantees to suspend given the nature of the emergency at hand. To paint a scenario: the GOM could elect to apply the article in a zone of perceived crisis, such as Ciudad Juarez, for the period of one year. The decree could potentially suspend rights guaranteed in the first chapter of the constitution, including freedom of expression, freedom of press, freedom of assembly, freedom of passage, or some tenets of legal due process. The military, for example, might be granted broader detention authorities. The law does not explicitly call for greater military involvement, and Gomez Mont told US officials that it is not martial law "in the way that you know it." Galvan's interest in the state of exception suggests two possibilities: that he envisions a potentially broader role for the military (at the expense, perhaps, of cooperation with other institutions), or that he is seeking a stronger legal framework and additional legal protections to back up the military's current domestic operations. Calderon has already put the military in charge of municipal police in Ciudad Juarez and other areas in Chihuahua State.

¶5. (S/NF) The discussion of Article 29's application is highly theoretical. Gomez Mont, when asked whether a state of exception would imply the federalization of municipal authorities, acknowledged a "constitutional gray area." He admitted that municipal governments could "be limited," but said that Mexico's signature to the UN Human Rights Charter limits how far the GOM could go in suspending rights.

#### The Limits

---

¶6. (SBU) The GOM does not take lightly its use of Article 29. The GOM has not, in fact, invoked it since when it declared war on Italy, Germany, and Japan during World War II. The GOM has even abstained from employing the measure during times of cataclysmic internal strife such as the 1968 student protests, the 1985 Mexico City earthquake, the 1990s fight against armed uprisings in Chiapas, or the 2006 Oaxaca protests.

¶7. (C) The GOM's hesitation so far to invoke the article is due to a number of factors, which are particularly relevant given the democratic context in which Mexico now operates. Perhaps most critical, the article clearly stipulates that Congress -- meaning both Chambers -- must approve the measure and its various permissions, circumvention of rights, geographic application, and time frame, suggesting that the President's ability to achieve a state of exception under his terms would be uncertain, at best. Such a move would not be seen solely as a law enforcement procedure but as a carefully calculated move with significant political implications. President Calderon lacks an absolute majority in either the Chamber of Deputies or the Senate, and it is unlikely that his opponents would approve carte blanche significantly expanded authorities for the military or federal government. Indeed, Calderon instead might run the risk of having his hands tied by Congress, depending on the vote and final details of how Article 29 would be invoked. For example, the legislature might vote to allow the federal government to declare a limited state of exception in a crisis zone for a short period of time, asking that Calderon then return to Congress to renew the mandate. This would give Congress at least nominal oversight over the military's counternarcotics operations, a role it has sought but not had up to this point. Congress could also reject wholesale the article's invocation, which would be an embarrassing public blow to the GOM.

¶8. (C) Moreover, Calderon is negotiating with Congress on other legislation that will better serve his counternarcotics goals. Proposed in late April, reforms to the National Security Act would provide a firmer legal framework for the military's domestic counterdrug fight, give the President the power to declare a threat to domestic security and deploy the military without congressional approval. It would also provide the military with greater intelligence authorities and powers over the state and local forces in the area.

MEXICO 00003101 003 OF 003

Institutional Revolutionary Party (PRI) contacts have indicated that they would prefer to limit presidential authority than expand it, and PRD Senator and member of the Justice Committee, Tomas Torres, has told Poloff that the reform as written is unlikely to pass. Nevertheless, such legislation permanently codifying the military's role and the President's authority to deploy it would certainly be of greater use to Calderon than would be a watered down state of exception.

¶9. (S/NF) Gomez Mont told U.S. officials during the October 19 exchange that the invocation of Article 29 would be "highly controversial," and downplayed its immediate necessity. The public relations cost of declaring a state of exception in places like Ciudad Juarez would likely be high, and almost certainly would draw increased scrutiny from the international and domestic human rights community. Moreover, a defeat by Congress of an Article 29 proposal would be seen as a public rejection of Calderon's counternarcotics strategy.

Comment

-----

¶10. (C) Benefits to an Article 29 strategy would be limited. If written correctly and approved by Congress, it could give the military a temporary legal cover for its activities and perhaps allow it to focus more on operations and less on its critics. Notable Mexico legal experts have envisioned the employment of Article 29 only in the case of a "firestorm," such as local or state governments rejecting military assistance in areas where the GOM sees it as badly needed. Galvan's views are more reflective of the military's desire for legal protections on human rights and other grounds, than of any imminent legal or political challenges to the military's current domestic counternarcotics role. Clearly, Calderon is looking for new tools with which to fight increased levels of violence in places like Ciudad Juarez,

but any benefits he would gain with an Article 29 state of exception would be undermined by the high political costs of such an approach. With questionable support in Congress and limited political capital, he would put at risk popular and congressional support that has given the military broad room to maneuver in the current legal framework. While the possibility of the declaration of a state of exception cannot be discounted at some future date, the GOM seems far from settled on the efficacy or need for such an immediate move.

Visit Mexico City's Classified Web Site at  
<http://www.state.sgov.gov/p/wha/mexicocity> and the North American Partnership Blog at <http://www.intelink.gov/communities/state/nap/> / FEELEY